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10/673,641	09/26/2003	William J. Gibson JR.	3242.01US02	1145
24113	7590	09/30/2005	EXAMINER	
PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.			BURCH, MELODY M	
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MINNEAPOLIS, MN 55402-2100			3683	

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/673,641

Applicant(s)

GIBSON, WILLIAM J.

Examiner

Melody M. Burch

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-15,17-28,30,31 and 33-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-15,17-28,30,31 and 33-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/22/05 has been entered.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: element number 13 mentioned in the amendment to the specification on the paragraph at pg. 3 line 15 – pg. 4 line 4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re: claim 37. The phrase "the inside margin of the bushing holder" is indefinite because it is unclear as to whether the phrase refers to the bushing holder body inside margin.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 4, 6, 11, 13, 15, 18, 19, 24, 28, 31, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3497037 to Deibel.

Re: claims 1, 2, 16, 19, 28, and 29. Deibel shows in figure 4 a support assembly 140,145 for supporting a s cam 118,119,128, the s cam being an intermediary device between a brake actuator 122 and a set of wheel brakes 112 shown in figure 1 and is generally an elongate shank 128 having an s head 118 at a first end of the shank and a set of splines 155 at the second end of the shank, the s head having at least one arm

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shown in figures 1 and 2 for engaging a respective brake shoe 112, whereby rotation of the s cam in a first direction causes the at least one arm of the s head to act on the brake shoe to frictionally engage the brake shoe with a brake drum 102 shown in figure 1, the brake drum being affixed to a wheel connected to element 102 comprising a single bushing 145 rotationally supporting the s cam.

Deibel is silent as to the material of the shank and does not show the single bushing being elongate.

Due to the lack of criticality associated with the limitation of the shank being metal, Examiner notes that it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Therefore, it is maintained that It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the shank of the s cam to have been made of metal in order to provide a shank with high structural integrity.

With regards to the bushing being elongate, in In re Rinehart 531 F.2d 1048, 189 USPQ 143 (CCPA 1976) the court held that "mere scaling up of a prior art process (or in this case an object) capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process (object) so scaled". Examiner notes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have increased the length of the single bushing of Deibel to be elongate in order to provide a means of rotationally supporting a longer portion of the shank.

Re: claims 4, 18, and 31. Due to the lack of criticality associated with the limitation of the bushing being formed of a plastic material, Examiner notes that it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Therefore, it is maintained that It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the bushing to have been made of a plastic material in order to provide a lightweight but durable bushing structure.

Re: claims 6 and 15. Deibel shows in figure 4 the bushing being substantially enclosed within a bushing holder 140.

Re: claim 11, 24, and 38. Deibel shows in figure 4 the bushing being substantially sealed within a bushing holder by first 146 and second 148 seal members disposed at first and second ends of the bushing respectively, each of the seal members forming a sealing interface with the bushing holder and the s cam shank. Claim language does not disclose that each of the seals is disposed directly adjacent an end of the bushing.

Re: claim 13. Deibel shows in figure 4 the s cam shank outside margin being spaced apart from an inside margin of the bushing. Examiner notes that there is inherently a narrow clearance between the bushing and the shank to allow rotation of the shank.

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7. Claims 1, 3, 4, 6, 7, 15, 17-20, 28, 30, 31, 33, 34, 39, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6240806 to Morris et al. in view of US Patent 2382554 to Eksbergian et al.

Re: claims 1-3, 6, 15, 17, 19, 28, 30-30, and 33. Morris et al. show in figure 4 a support assembly 54,59,60 for supporting a s cam 53,52 the s cam being an intermediary device between a brake actuator 18 and a set of wheel brakes disclosed in col. 1 lines 15-16 cooperating with element 53 and is generally an elongate shank 52 having an s head 53 at a first end of the shank and a set of splines 64 at the second end of the shank, the s head having at least one arm shown in figure 2 for engaging a respective brake shoe, whereby rotation of the s cam in a first direction causes the at least one arm of the s head to act on the brake shoe to frictionally engage the brake shoe with a brake drum as disclosed in col. 1 lines 15-16, the brake drum being affixed to a wheel implicitly described by the disclosure in col. 1 lines 15-16 and col. 4 lines 42-43 comprising a bushing assembly rotationally supporting the s cam. (bushing holder is element 54.)

Morris et al. fail to disclose that the bushing assembly comprises a single bushing and are silent as to the material of the shank.

Eksbergian et al. teach on pg. 2 line 73 – pg. 3 line 2 the use of a single elongate bearing to replace two spaced apart bearings.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the two spaced apart bushings of Morris et al. to

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have included a single elongate bushing, in view of the teachings of Eksbergian, in order to facilitate assembly by having less parts.

Due to the lack of criticality associated with the limitation of the shank being metal, Examiner notes that it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Therefore, it is maintained that It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the shank of the s cam to have been made of metal in order to provide a shank with high structural integrity.

Re: claims 4, 18, and 31. Due to the lack of criticality associated with the limitation of the bushing being formed of a plastic material, Examiner notes that it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Therefore, it is maintained that It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the bushing to have been made of a plastic material in order to provide a lightweight but durable bushing structure.

Re: claims 7, 20, and 34. Morris et al., as modified, teach in figure 4 of Morris et al. the bushing holder having at least one grease fitting 72 disposed in a bore defined through a bushing holder body.

Re: claim 39. Morris et al., as modified, teach in figure 4 of Morris et al. including forming a sealing interface with the bushing holder and the s cam shank in the area of element 63.

Re: claim 41. Morris et al. teach in figure 4 of Morris et al. the s cam shank outside margin being spaced apart from an inside margin of the bushing. Examiner notes that there is inherently a narrow clearance between the bushing and the shank to allow rotation of the shank.

8. Claims 12, 14, 25, 26, 27, 40, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deibel in view of 4346535 to Asano et al.

Re: claims 12, 25, and 40. Deibel shows in figure 4 the s cam shank outside margin having a certain outside diameter.

Deibel is silent as to method of production of the shank outside margin.

Asano et al. teach in col. 1 lines 14-15 the use of a shank of a cam being machined. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the shank of Deibel to have been machined, as taught by Asano et al., in order to provide a means of creating the various diameter differences in the shank.

Examiner notes that the limitation of the shank outside margin being machined represents a method of making the shank. In section 2113 of the MPEP it is stated that the patentability of a product is not based on its method of production but on the product itself.

Re: claims 14, 26, and 42. Deibel shows in figure 4 the limitation wherein the s cam shank outside margin is spaced apart from an inside margin of the bushing.

Deibel does not specifically disclose a range of sizes of the space. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the space of Deibel to have been an amount between .001 and .010 inches since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

9. Claims 12, 14, 25, 26, 27, 40, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris et al. in view of Eksergian et al. and further in view of 4346535 to Asano et al.

Re: claims 12, 25, and 40. Morris et al., as modified, teach in figure 4 of Morris et al. the s cam shank outside margin having a certain outside diameter.

Morris et al., as modified, is silent as to method of production of the shank outside margin.

Asano et al. teach in col. 1 lines 14-15 the use of a shank of a cam being machined. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the shank of Morris et al., as modified, to have been machined, as taught by Asano et al., in order to provide a means of creating the various diameter differences in the shank.

Examiner notes that the limitation of the shank outside margin being machined represents a method of making the shank. In section 2113 of the MPEP it is stated that

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the patentability of a product is not based on its method of production but on the product itself.

Re: claims 14, 26, and 42. Morris et al., as modified teach in figure 4 of Morris et al. the limitation wherein the s cam shank outside margin is spaced apart from an inside margin of the bushing.

Morris et al., as modified, do not specifically disclose a range of sizes of the space.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the space of Morris et al., as modified, to have been an amount between .001 and .010 inches since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

10. Claims 8-10, 21-23, and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6240806 to Morris et al. in view of US Patent 2382554 to Eksergian et al. and further in view of US Patent 6450073 to Boyer et al.

Re: claims 8, 21, and 35. Morris et al., as modified, describe the invention substantially as set forth above, but does not include the limitation of the grease fitting intersecting a circumferential groove defined in the bushing holder inside margin.

Boyer et al. teach in figures 3 and 4 the use of a bushing holder 30 having a circumferential groove 38 defined in the bushing holder inside margin.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the inside margin of the bushing holder of Morris

et al., as modified, to have included a circumferential groove, as taught by Boyer et al., in order to provide a means of directing lubricant flow into the inner portions of the bushing holder.

Re: claims 9, 10, 22, 23, 36, and 37. Morris et al., as modified, teach in figures 3 and 4 of Boyer et al. the limitation of a circumferential groove 38 intersecting at least one spiral groove 40 defined in the bushing holder inside margin.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the inside margin of the bushing holder of Morris et al., as modified, to have included at least one spiral groove intersecting a circumferential groove, as taught by Boyer et al., in order to provide a means of directing lubricant flow into the inner portions of the bushing holder.

Response to Arguments

11. Applicant's arguments filed 8/22/05 have been fully considered but they are not persuasive.

With regards to the Deibel reference, Applicant argues that Deibel fails to teach or suggest a bushing wherein the bushing is substantially coextensive with an S cam shank. Claims 1 and 28 require that the bushing be substantially coextensive along the length of the S cam shank. Examiner notes that bushing 145 is substantially coextensive along the length of the S cam shank that coincides with the length of the bushing 145.

With regards to the Morris in view of Eksergian rejection, Applicant argues that Eksergian does not teach or suggest a single elongate bushing as claimed. Examiner

maintains that Eksergian teaches on pg. 2 line 73 – pg. 3 line 3 replacing two spaced apart bearings with “a single elongated bearing portion 31a in a similarly elongated bearing”. Examiner further maintains that, in view of the teachings of Eksergian, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the two spaced apart bushings of Morris with a single elongated bushing. The combination of Morris and Eksergian does not include the actual physical incorporation of the bearing arrangement of Eksergian into Morris, but instead the incorporation of the teaching in Eksergian of replacing two spaced apart bearings with a single elongated bearing.

In response to applicant's argument that the Boyer reference is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the Boyer reference is reasonably pertinent to the particular problem with which the Applicant was concerned. Examiner notes that similar to Applicant, the Boyer reference is concerned with lubricating the inner portions of a bushing holder to help ensure proper device operation.

Accordingly, the rejections have been maintained.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 571-272-7114. The examiner can normally be reached on Monday-Friday (6:30 AM-3:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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September 26, 2005

Melody M. Burch
9/26/05